

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.G., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Tacoma, WA, Employer**

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**Docket No. 14-1538  
Issued: April 16, 2015**

*Appearances:*

*Howard L. Graham, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 27, 2014 appellant, through counsel, filed a timely appeal of a March 31, 2014 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On appeal, counsel contends that the decision is unsupported by the law and facts of this case.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 4, 2013 appellant, then a 43-year-old medical technologist, filed an occupational disease claim alleging that on July 1, 2011 she first became aware of her stress condition. However, it was not until January 8, 2013 that she realized it was due to the performance of her duties as lead technologist and other work conditions over the past 18 months.

By letter dated February 11, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to establish her claim.

In response to OWCP's request for additional evidence the following evidence was received. In progress notes dated May 6, 2010, Dr. Grace B. Gamponia, a treating Board-certified family practitioner, indicated that appellant was seen for headaches and sleep apnea. Appellant stated that her headaches occurred in the evening, impacted her sleep, and were caused or aggravated by stress.

In a September 9, 2010 progress note, Dr. Gamponia diagnosed headaches and reported elevated blood pressure. She stated that appellant was stressed because she was moving out of her house. In September 14, 2010 progress notes, Dr. Gamponia related seeing her for blood pressure issues, headache, nausea, and dizziness. She stated that appellant was under a lot of stress because she was trying to move out her house.

Dr. Verlene Joyce Gauthier, a treating Board-certified internist and rheumatologist, diagnosed hypertension with stress and headache in progress notes dated January 4, 2013.

A January 4, 2013 Franciscan Health Care report revealed that appellant was seen at the Saint Clare Hospital emergency room. Appellant stated that she had a headache at work and her blood pressure had been measured 174/120 at her work health clinic. Jennifer Thornton<sup>2</sup> noted that appellant was under increased stressors and "has been trying to deal with multiple things."

In January 27, 2013 progress notes, Dr. Gamponia diagnosed headaches and sleep apnea. She noted that appellant felt "overwhelmed with being a full[-]time worker" and household chores to perform when she gets home from work.

In a February 14, 2013 work capacity evaluation psychiatric/psychological conditions (Form OWCP-5a), Jan J. Jiles, Ph.D., a licensed medical health counselor and clinical psychologist, diagnosed post-traumatic stress disorder and anxiety disorder. She indicated that appellant was totally disabled from working. In support of this conclusion, Dr. Jiles stated that appellant was experiencing frequent panic attacks and post-traumatic stress disorder due to intimidation from a coworker and an unresolved conflict with her supervisor. The explanation given for her condition and disability was that she had concentration and memory problems, headaches, dizziness, nausea, sleep disturbances, and panic attacks.

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<sup>2</sup> It is not clear whether Jennifer Thornton was a doctor, nurse, or physician's assistant.

On February 19, 2013 OWCP received an undated disability note from Dr. Jiles diagnosing traumatic stress disorder and generalized anxiety and opining that she was currently disabled due to these conditions. Dr. Jiles stated that appellant was first seen on January 10, 2013 and that appellant was being treated by her primary care physician for employment-related stress. She described appellant's stressors as due to an unresolved work environment conflict.

In a February 15, 2013 disability note, Dr. Jiles repeated findings and conclusions from the undated note OWCP received on February 19, 2013. In a February 26, 2013 note, she reported the dates appellant received mental health treatment and noted that she was first seen on January 10, 2013. At the first visit, appellant related that two days after being promoted in May 2011 to lead technician she was told she would have to take on the responsibilities of the retiring quality control coordinator in addition to those of her lead technologist position. She related that she received inadequate training, procedures were not in place, that her supervisor was unable to provide her with training and supervision to comply with her multiple new duties, that she had increased duties and responsibilities due to her multiple roles, and that she was subjected to harassment and a hostile work environment. Dr. Jiles opined that as a result of these conditions appellant developed post-traumatic stress disorder and anxiety disorder. The anxiety disorder is characterized by dizziness, severe headaches, neck pain, nausea, and back pain. In addition, appellant experiences loss of memory and concentration, depression, sleeping problems, isolation, distressing and recurrent thoughts regarding her work problems, and a decreased interest in outside activities. Dr. Jiles related that appellant was having difficulty meeting the demands of her work position as well as having flashbacks regarding interactions with her supervisor and fellow workers. In concluding, she opined that appellant was disabled from returning to her current work position due to her anxiety and post-traumatic stress disorder. Dr. Jiles stated that appellant would be able to slowly return to work with a different work environment and/or reduced work hours.

By decision dated August 8, 2013, OWCP denied appellant's claim on the grounds that she failed to establish any compensable factors of employment.

On August 13, 2013 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The requested hearing was held on January 14, 2014. Following the hearing, appellant submitted medical and factual evidence as set forth below.

Appellant submitted a number of e-mail correspondence for the period January 4 through December 18, 2012 detailing her job duties, her supervisor delegating duties that her supervisor's supervisor had delegated to the supervisor, solving employee concerns, and being short staffed due to employees being out on sick leave, compensatory time, and emergency leave. She also detailed being asked to change her work schedule by her supervisor in a February 28, 2012 e-mail. Specifics of the most relevant e-mail correspondence during this period is detailed below.

In e-mail correspondence dated June 3, 2011, appellant detailed the work performed that day to her supervisor which included staff training, supply orders, staff assignments, weekly maintenance was completed with a follow up on maintenance; interact with service engineering, running College of American Pathologists surveys, quality control trouble shooting; and one staff person left early that day and appellant requested guidance on this type of situation. In

response on June 7, 2011, her supervisor complimented appellant on her work and stated “Does it make you tired just reading it?.”

In a September 29, 2011 e-mail correspondence, her supervisor noted that appellant had an “ever expanding role” as lead technician and quality control coordinator. She related that appellant “is very successfully completed quality control tasks that were vacated by... a coworker, when she retired.” The supervisor further noted that it had “been a big job to learn, along with our short staffing, and covering the bench.” She informed the recipients of the e-mail that appellant was being asked to become more involved in other activities and that appellant would be acting “as a consultant or technical expert” when someone runs into a complicated situation or needs help in thinking a problem out.

In e-mail correspondence to her supervisor for the period November 3 to 17, 2011, appellant detailed duties performed on November 3, 2011, that she was short staffed on November 2, 2011 as her supervisor and another employee were out sick and she cancelled her “[personal identity verification] PIV appointment.” In her November 17, 2011 e-mail, she detailed the work performed that day. On November 18, 2011 appellant’s supervisor replied to appellant’s November 17, 2011 e-mail correspondence by stating “Excellent Work! And all in addition to the daily grind.”

Appellant supervisor in December 30, 2011 e-mail correspondence, stated that appellant was performing the majority of the duties that the retired quality control coordinator had been performing.

The record contains appellant’s lead technician performance plan for Fiscal Year 2012 which included duties for both quality control and lead medical technician duties.

On May 29, 2012 her supervisor informed appellant by e-mail that she would be out sick that day and additional duties to perform. Appellant was asked to meet with two individuals at 9:00 a.m.; to get contact information for a technical application representative who was planning to visit on June 11, 2012; and asking people to attend a 12:30 p.m. presentation as well as getting a projector for the presentation. She wrote on this e-mail that three people were out with two being sick and one leaving for an appointment.

A July 23, 2012 uniform offense report from the employing establishment police detailed a June 1, 2012 incident involving appellant. The names and personal information concerning the investigating officer, appellant, witnesses, and the suspect are redacted in the report. Appellant alleged being threatened by a coworker who acted out and kicked a chair while talking to her. She alleged that he also used an ethnic slur when he stated that he would talk slow so that she could understand him. The report also investigated appellant’s claim of harassment by this individual, which it found to be corroborated by the witness statements. The report stated that she had filed grievances with the Equal Employment Opportunity (EEO) commission. The report noted the case was closed pending administrative action.

In a November 7, 2012 e-mail, appellant disputed her supervisor’s contention that she had been out of work for two months due to annual and sick leave following her February trip. She stated that over a five-week period following her return she had only been out sick for five

and one-half days. Appellant related that upon her return she felt overwhelmed with tasks that should have been completed while she was out.

In a December 6, 2012 letter concerning the notice of amendment and acceptance of the EEO complaint for appellant from Paul Maraian for Tracy M. Strub, Regional EEO Officer stated that her claim had been accepted for nine events and would be considered in the evaluation of her hostile work environment/harassment claim. The remaining events of 1 through 42 were accepted for investigation. It noted that if appellant disagreed with the formulation of the accepted claim she was to submit a written notice within seven days of receipt of the December 6, 2012 letter. It noted that her claim would be assigned for investigation of the accepted incidents.

In an April 5, 2013 witness affidavit, a coworker stated that she had three weeks of training with the quality control coordinator who retired and that appellant had to rely on her for what she learned. She stated that she had training opportunities which were unavailable to appellant "due to low staffing or other reasons."

In a January 29, 2014 report, Dr. Jiles related that appellant came under stress as the result of her promotion to lead technician on May 11, 2011 and having to take on the responsibilities of the quality control coordinator who retired in July 2011. Appellant was told that she had to quickly learn the duties of the quality control coordinator as the individual seldom came to her work site and planned on taking personal time prior to retiring. Next, Dr. Jiles noted that appellant did not receive the salary and grade increase in her pay stubs until approximately five months later on October 28, 2011. As a result of this delay appellant was concerned as to whether the promotion had been approved. Dr. Jiles related that appellant was not given competency checks or adequate training to ensure that she had the skillset and knowledge to perform her new position and that there were no tools or procedures in place. Appellant felt helpless as the quality control coordinator files she needed to view were not accessible from her worksite as they were kept in Seattle, WA. Dr. Jiles detailed the duties of appellant's lead technician position and of quality control coordinator and reported that appellant began to feel overwhelmed by the endless tasks of performing both jobs.

Appellant related being subjected to bullying, harassment, and intimidation by her supervisor and two male coworkers. Dr. Jiles provided details of incidents from December 5, 2011 through October 15, 2013 where appellant alleged harassment and bullying by two coworkers and her supervisor. On May 25, 2012 appellant stated that her supervisor coerced her into signing a disputed performance plan. She alleged that she worried about her safety due to the bullying by two male coworkers.

Incidents alleged by appellant are as follows. On December 5, 2011 appellant was acting supervisor as her supervisor was on vacation. She stated that a coworker got upset with her when she explained that his decision regarding the breaks for student interns was contrary to the schedule set by her supervisor. The coworker stood by a door with scissors in his hand and with a threatening face warned appellant to be careful with her statements. In April 2012, he allegedly harassed her by "pointing two fingers to his eyes and pointing them back at her and laughing while she got annoyed. The coworker allegedly "took his anger" out on appellant in May 2012 when the blood samples he took were deemed to be invalid for testing by another

technologist. On June 1, 2012 he according to appellant, insulted her ability to communicate and understand English as he disagreed with her being made acting supervisor.

Appellant's claims that on June 25, 2012 her supervisor retaliated against her for filing an EEO complaint by harrasing her, demeaning her and monitoring her work. She claims these activities continued from June 2012 to a mediation meeting in September 2012. Appellant was instructed by her supervisor to work late on June 29, 2012 with the coworker she alleged was harrasing and was told it would be fun. She requested her supervisor to have someone else present as she was concerned for her safety and being alone with this man.

In September 2012, appellant stated that another male coworker yelled good morning in her ear after coming up from behind her. She related that he was on probation, that he smelled of alcohol on September 18, 2012, and there were numerous reports of mistakes in his labwork. Appellant recommended retraining of the coworker to her supervisor on December 7, 2012. At this time, the coworker referred to the numerous guns he owned, that he lived close by, and going home would not take long. Appellant took these comments as threats to her safety. Allegedly the coworker made "a trigger finger gesture" at her while passing in the hallway. Appellant alleged that he created a hostile work environment as he was constantly spying on her, reporting her to her supervisor, and telling her that "[n]obody likes a complainer." She alleged that her supervisor wrote her up for using laboratory materials that the coworker had used. Appellant felt overloaded and confused with her "multiple, simultaneous projects, with overlapping deadlines." According to her job description, her functional statement was changed by her supervisor six times over four months.

The job duties of quality control coordinator were supposed to be temporary, but later became permanent duties of her position. Appellant alleged that she was given unfair performance evaluations by her supervisor. She found the EEO process exhausting, tedious, stressful, and counterproductive to her treatment and therapy. According to appellant her supervisor contributed to a retaliatory, hostile work environment by criticizing her about her physical appearance, weight, ability to communicate, e-mail correspondence, and blaming her for the mistakes of other individual. She alleged that she was given a conflicting order from her supervisor on various dates in 2012 which caused moral stress and that she was forced to correct mistakes made by other individuals.

Incidents of harassment by appellant's supervisor included: being threatened that she would not have a job if she stepped down from the lead technician position on July 13, 2012; on August 9, 2012 her supervisor excluded appellant from the list of people who could eat the bagels the supervisor brought in because she was out sick the prior day; the supervisor required appellant to explain her health condition and reasons on August 23, 2012 before approving a sick leave request; on January 2, 2014 appellant was in pain due to an injury sustained while lifing a box of reagent the night before and her supervisor ignored her request to go home; her supervisor did not file an incident report for the injury or instruct appellant to be checked out by the employee health unit; on January 9, 2013 appellant was ordered to submit a calendar of activities and keep track of her time to her supervisor; on March 16, 2013 her request for advanced annual and sick leave was denied; on April 19, 2013 her supervisor demanded, *via* appellant's personal e-mail, that her laboratory keys be returned that day. Appellant was on medical leave from February 6 to July 7, 2013; her leave without pay request was denied on April 19, 2013;

appellant's request for a reasonable accommodation including a request to work part time was denied on July 8, 2013; on September 2, 2013 she was threatened by her supervisor for wearing earplugs in the laboratory as instructed by her doctor; on September 26, 2013 appellant was instructed to give up her cabinet keys; on October 15, 2013 she felt harassed when her supervisor suggested medical retirement to her; on April 24, 2012 appellant was asked to reschedule her husband's surgery so she could attend a laboratory analyzer presentation by a vendor; on September 12, 2012 she was told she could only take a two-week vacation when she had previously been allowed to take up to a month when she traveled home to the Philippines; appellant's workers' compensation claim was delayed due to late filings by her supervisor; as a result of her lost wages she has incurred economic hardship; appellant's ergonomic problems at work were never addressed; and no action was taken following her reports of patient safety regulation violations. In concluding Dr. Jiles opined that above incidents and events caused appellant's depression, post-traumatic stress disorder, and anxiety and have adversely impacted her ability to work as well as her personal life activities.

In a February 10, 2014 witness statement, a coworker stated that in March and May 2012 while she and appellant were conversing in their native language that the supervisor approached them and instructed them to speak in English. She also noted two incidents involving one of the coworkers. One was on November 12, 2013 when the witness discovered that the coworker had released wrong test results for a patient and she informed the supervisor. The next day he called her a trouble maker for reporting his mistake. One September, 18, 2012 she reported to appellant, who was in charge that day, that she smelled alcohol on the coworker's breath. As appellant was unable to contact the supervisor for instructions, appellant contacted Human Resources and the the employing establishment police. The supervisor discussed with appellant her handling of this incident the following day. A coworker also stated that appellant had been under a great deal of stress due to being overloaded with projects, quality control work, and lab work. She stated that the two male coworkers "have been giving [appellant] a hard time" which her supervisor covers up and tolerates. The witness also stated that the supervisor always points to appellant as she is not knowledgeable about lab work. Lastly, she related that appellant was the only person not trained for MDIFF even though she has been asking for this training.

On February 24, 2014 appellant submitted an undated list of her increased work responsibilities and e-mail correspondence. In her undated statement, she related that she understood the duties and responsibilities of the lead technician when she applied for the position. Appellant noted that she was ordered to take on the duties of quality control coordinator from the person retiring and that she did not apply for this position. Her supervisor required appellant to perform the duties of the quality control coordinator position even though appellant was assured that her performing this position in addition to her new position was temporary. Appellant alleged that she was pressured in September 2012 by her supervisor to take on the "full responsibility of Hematology and coagulation quality assurance." She alleged that she was covering all sections of the laboratory as she was both lead technician and quality control coordinator.

In e-mail correspondence to a union representative for the period January 10 to February 1, 2013, appellant expressed her concern regarding her supervisor asking her to sign a functional statement, which appellant stated had been revised multiple times. She alleged that the multiple revisions of her functional statement, combining two separate positions into her job

description, the lack of training, clear procedures, and competency assesment constituted harassing and retaliatory actions by her supervisor. Appellant also alleged that her performance plan and evaluation was very confusing so that she was unable to understand exactly what her duties were since they contained duties for GS-9, 10 and 11 and she was a GS-10.

By decision dated March 31, 2014, OWCP's hearing representative affirmed the August 8, 2013 decision.<sup>3</sup>

### **LEGAL PRECEDENT**

To establish a claim that she sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>4</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>5</sup> There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.<sup>6</sup> Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>7</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>8</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>9</sup> If a claimant does implicate a factor of

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<sup>3</sup> The Board notes that, following the March 31, 2014 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>4</sup> *V.W.*, 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>5</sup> *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>6</sup> *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

<sup>7</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Coned*, 52 ECAB 410 (2001).

<sup>9</sup> *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, 57 ECAB 611 (2006).



employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>10</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>11</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>12</sup> However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>13</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>14</sup>

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principal recognizes that a supervisor or manager must be allowed to perform their duties and that employee's will, at times, disagree with actions taken. Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.<sup>15</sup> Although the handling of leave requests and attendance matters are generally related to employment, they are administrative matters and not a duty of the employee.<sup>16</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>17</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>18</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>19</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>20</sup> A claimant must

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<sup>10</sup> *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>11</sup> *Robert Breeden*, *supra* note 5.

<sup>12</sup> *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>13</sup> *See William H. Fortner*, 49 ECAB 324 (1998).

<sup>14</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>15</sup> *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>16</sup> *C.T.*, Docket No. 08-2160 (issued May 7, 2009); *Jeral R. Gray*, *supra* note 9.

<sup>17</sup> *K.W.*, *supra* note 10; *Robert Breeden*, *supra* note 5.

<sup>18</sup> *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>19</sup> *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 5.

<sup>20</sup> *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>21</sup>

### ANALYSIS

Appellant attributed her stress condition to her lead technologist duties and other work conditions over the past 18 months. OWCP denied her claim on August 8, 2013 on the grounds that she failed to establish any compensable factors of employment. The hearing representative affirmed the denial of appellant's claim on March 31, 2014. The issue is whether appellant has established any compensable work factors which would warrant further development of her claim.

The Board finds that appellant has established compensable factors of employment with regard to overwork. Appellant alleged that she was overworked due to having to perform both the duties of the lead technician and quality control coordinator. The record contains e-mail correspondence from her supervisor, witness statements and e-mail correspondence from appellant detailing her work duties which support her allegation. In a September 29, 2011 e-mail, appellant's supervisor noted an "ever expanding role" for appellant as both lead technician and quality control coordinator. She acknowledged that it was a big job to learn along with cover the bench and their short staffing. The record also contains 2012 performance plan for appellant included duties for the positions of quality control coordinator and lead medical technician. Where disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as arising out of and in the course of employment and falls within FECA's coverage.<sup>22</sup> The Board finds that appellant has submitted substantial evidence of her heavy workload, lack of adequate staffing and working the duties of two positions. Therefore it is found that appellant has established a compensable work factor under *Cutler*.<sup>23</sup>

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<sup>21</sup> *Robert Breeden, supra* note 5; *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>22</sup> *Lillian Cutler, supra* note 7. *See Alice F. Harrell*, 53 ECAB 713 (2002).

<sup>23</sup> *Trudy A. Scott, supra* note 7 (where appellant alleged that she suffered from an emotional breakdown when she was required to take on extra duties, such as staff scheduling, when a supervisor left her job. The employing establishment did not dispute that her duties changed or that there was a staff shortage but denied that her workload was overly stressful. The Board held that conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable. The record, consisting of appellant's performance evaluation and the affidavit of a witness, established that she had a heavy and demanding workload, in part due to understaffing and hiring delays with the employing establishment. The Board found that her increased workload, with the requirement that she take over scheduling duties of a departed employee, was a condition of her specially assigned duties and was to be considered a compensable work factor); *William J. Blankenship*, Docket No. 97-1071 (issued January 7, 2000) (where the Board found that appellant established a compensable work factor from his heavy workload when he was assigned additional duties, in addition to his regular duties, after a coworker resigned. Appellant had the sole responsibility to create a criminal enforcement program which required him to learn new computer skills and was given more regions to cover with additional laws to enforce). *See also Richard H. Ruth*, 49 ECAB 503 (1998) (where the Board held that emotional reactions to situations in which an employee is trying to meet his or her position requirements, when supported by sufficient evidence, are compensable).

The actions of a claimant's supervisor and coworkers, which the claimant characterizes as harassment, may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.<sup>24</sup> An employee's allegations that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.<sup>25</sup> To establish entitlement to benefits, a claimant must establish a factual basis for his or her claim by supporting his or her allegations with probative and reliable evidence.<sup>26</sup>

In support of her claim for harassment and a hostile work environment, appellant submitted her statement, a statement by Dr. Jiles, a redacted July 23, 2012 employing establishment police report, a December 6, 2012 letter accepting appellant's EEO complaint for further investigation, and an April 5, 2013 witness affidavit by a coworker. She failed to establish that her supervisors or coworkers threatened or harassed her. Appellant only provided general allegations of harassment or discrimination by her supervisor. She alleges her supervisor requested that she speak English after overhearing appellant and a coworker speaking in their native language. Appellant also alleges harassment by two male coworkers. However, there is no final decision supporting her claim of harassment by these individuals, as to these instances. None of appellant's statements provide details regarding specific instances of discrimination or harassment. She did not provide evidence to substantiate her allegations of harassment.<sup>27</sup> Accordingly, appellant has not established her allegations that she was harassed by her supervisors or coworkers.

The Board further finds that appellant has failed to establish a hostile work environment. Appellant has not submitted sufficient factual evidence to support that she was subjected to a hostile work environment. While the redacted July 23, 2012 police report and the December 6, 2012 letter accepting her EEO complaint for further investigation are supportive of her claim for a hostile work environment, they are not final decisions. The July 23, 2012 report noted that appellant's claim had been referred for administrative processing while the December 6, 2012 letter noted that parts of her claim were accepted for further investigation. There is no decision such as a final EEO decision finding that appellant was subjected to a hostile work environment. As such, appellant's allegation of a hostile work environment constitute mere perceptions or generally stated assertions of dissatisfaction with certain superiors at work which do not support her claim for an emotional disability.<sup>28</sup> As appellant submitted no evidence supporting a hostile work environment, OWCP properly determined that her allegation was merely a perception of

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<sup>24</sup> *G.S.*, *supra* note 20; *J.C.*, 58 ECAB 594 (2007); *Robert G. Burns*, *supra* note 5.

<sup>25</sup> *See C.T.*, Docket No. 08-216 (issued May 7, 2009); *K.W.*, 59 ECAB 271 (2007); *Ronald K. Jablanski*, *supra* note 20.

<sup>26</sup> *See G.S.*, *supra* note 20; *C.S.*, 58 ECAB 137 (2006); *Frankie McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>27</sup> *See G.S.*, *supra* note 20; *Joel Parker, Sr.*, 43 ECAB 220 (1991) (the Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>28</sup> *See Robert G. Burns*, *supra* note 5; *Curtis Hall*, 45 ECAB 316 (1994); *Kathleen D. Walker*, 42 ECAB 608 (1991).

appellant and not factually established. Appellant has not submitted evidence sufficient to establish that the employing establishment created a hostile workplace environment for her. Thus, she has not established a compensable factor with respect to her allegation of a hostile work environment.

As appellant has established a compensable employment factor, overwork, OWCP must base its decision on an analysis of the medical evidence as it relates to appellant's workload. The case will therefore be remanded to OWCP to analyze and develop the medical evidence.<sup>29</sup> After such further development deemed necessary, OWCP shall issue a *de novo* decision on the merits of this claim.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 31, 2014 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: April 16, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>29</sup> *Tina D. Francis*, 56 ECAB 180 (2004).